

HOUSE BILL 604

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Rod Montoya and James R.J. Strickler and
Paul C. Bandy and David M. Gallegos

AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE SECURITIZATION BOND
ACT; AUTHORIZING CERTAIN UTILITIES TO ISSUE BONDS PURSUANT TO A
FINANCING ORDER ISSUED BY THE PUBLIC REGULATION COMMISSION;
PROVIDING PROCEDURES FOR REHEARING AND JUDICIAL REVIEW;
PROVIDING LIMITS ON THE JURISDICTION OF THE COMMISSION;
CREATING SECURITY INTERESTS IN CERTAIN PROPERTY; PROVIDING FOR
THE PERFECTION OF INTERESTS IN CERTAIN PROPERTY; EXEMPTING
SECURITIZATION CHARGES FROM FRANCHISE AND CERTAIN OTHER
GOVERNMENT FEES; PROVIDING FOR NONIMPAIRMENT OF SECURITIZATION
CHARGES AND BONDS; REQUIRING CERTAIN UTILITIES TO TRANSFER A
PORTION OF BOND PROCEEDS TO A COUNTY WHERE A GENERATING
FACILITY IS BEING ABANDONED; PROVIDING FOR CONFLICTS IN LAW;
PROVIDING THAT ACTIONS TAKEN PURSUANT TO THE SECURITIZATION
BOND ACT SHALL NOT BE INVALIDATED IF THE ACT IS HELD INVALID.

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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be
3 cited as the "Securitization Bond Act".

4 SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
5 Securitization Bond Act:

6 A. "adjustment mechanism" means a formula-based
7 calculation used to make adjustments to the amount of the
8 securitization charges that are necessary to correct for any
9 over-collection or under-collection of the securitization
10 charges and to provide for the timely and complete payment of
11 scheduled principal and interest on the securitization bonds
12 and the payment and recovery of other financing costs in
13 accordance with the financing order;

14 B. "ancillary agreement" means a bond, insurance
15 policy, letter of credit, reserve account, surety bond,
16 interest rate lock or swap arrangement, hedging arrangement,
17 liquidity or credit support arrangement or other similar
18 agreement or arrangement entered into in connection with the
19 issuance of a securitization bond that is designed to promote
20 the credit quality and marketability of the bond or to mitigate
21 the risk of an increase in interest rates;

22 C. "assignee" means a person or legal entity to
23 which an interest in securitization property is sold, assigned,
24 transferred or conveyed, other than as security, and any
25 successor to or subsequent assignee of such a person or legal

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1 entity;

2 D. "bondholder" means a holder or owner of a
3 securitization bond;

4 E. "commission" means the public regulation
5 commission;

6 F. "credit rating" means the investment rating for
7 the unsecured debt obligations of a qualifying utility as
8 published by at least one nationally recognized statistical
9 rating organization as recognized by the United States
10 securities and exchange commission;

11 G. "displaced worker" means a New Mexico resident
12 who:

13 (1) within the previous twelve months was
14 terminated from employment, or whose contract was terminated,
15 due to the closure and abandonment of a qualifying generating
16 facility, including workers employed by a mine that supplied
17 coal to such a facility;

18 (2) received at least seventy-five percent of
19 the displaced worker's net income, as that term is defined in
20 the Income Tax Act, from the employment or contract described
21 in Paragraph (1) of this subsection; and

22 (3) does not qualify to receive full benefits
23 pursuant to a pension or retirement plan from the qualifying
24 generating facility or the associated mine;

25 H. "financing cost" means the reasonable and

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1 prudent costs incurred by the qualifying utility to issue,
2 service, repay or refinance securitization bonds, whether
3 incurred or paid upon issuance of the bonds or over the life of
4 the bonds, and approved for recovery by the commission in a
5 financing order. "Financing cost" includes:

6 (1) principal, interest, acquisition,
7 defeasance and redemption premiums that are payable on
8 securitization bonds;

9 (2) any payment required under an ancillary
10 agreement and any amount required to fund or replenish a
11 reserve account or other account established under any
12 indenture, ancillary agreement or other financing document
13 relating to the securitization bonds;

14 (3) any costs related to issuing, supporting,
15 repaying, servicing and refunding securitization bonds or the
16 application for a financing order, including servicing fees and
17 expenses, accounting and auditing fees and expenses, trustee
18 fees and expenses, legal fees and expenses, administrative fees
19 and expenses, consulting fees and expenses, placement and
20 underwriting fees and expenses, printing and edgarizing fees,
21 capitalized interest, rating agency fees, government
22 registration fees, stock exchange listing and compliance and
23 filing fees;

24 (4) any costs incurred to obtain modifications
25 of or amendments to any indenture, financing agreement,

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1 security agreement or similar agreement or instrument relating
2 to any existing secured or unsecured obligation of a qualifying
3 utility or an affiliate of a qualifying utility, or any costs
4 incurred by or allocated to a qualifying utility to obtain any
5 consent, release, waiver or approval from any holder of such an
6 obligation, that are necessary to be incurred to permit a
7 qualifying utility to issue or cause the issuance of
8 securitization bonds;

9 (5) any taxes, fees, charges or other
10 assessments imposed on securitization revenues;

11 (6) any other costs and charges approved by
12 the commission for inclusion in a securitization charge; and

13 (7) any other related costs that are approved
14 for recovery in the financing order;

15 I. "financing order" means an order of the
16 commission that:

17 (1) authorizes the issuance of securitization
18 bonds;

19 (2) authorizes the imposition, collection and
20 periodic adjustments of the securitization charge; and

21 (3) creates securitization property;

22 J. "financing parties" means:

23 (1) a trustee, collateral agent or other
24 person acting for the benefit of a bondholder; and

25 (2) a party to an ancillary agreement or the

1 securitization bonds, the rights and obligations of which
2 relate to or depend upon the existence of securitization
3 property, the enforcement and priority of a security interest
4 in securitization property or the timely collection and payment
5 of securitization revenues;

6 K. "financing statement" means "financing
7 statement" as defined in the Uniform Commercial Code-Secured
8 Transactions;

9 L. "non-bypassable" means that the payment of a
10 securitization charge may not be avoided by an electric service
11 customer located within a utility service area and shall be
12 paid by the customer that receives electric delivery service
13 from the qualifying utility imposing the charge for as long as
14 the securitization bonds secured by the charge are outstanding
15 and the related financing costs have not been recovered in
16 full;

17 M. "non-utility affiliate" means, with respect to
18 any qualifying utility, a person that:

19 (1) is an "affiliated interest", as that term
20 is used in the Public Utility Act, of a qualifying utility; and

21 (2) is not a "public utility", as that term is
22 used in the Public Utility Act;

23 N. "qualifying generating facility" means a coal-
24 fired electric generating facility, which may be composed of
25 multiple generating units, that:

1 (1) has been granted a certificate of public
2 convenience and necessity and has generated electric energy for
3 ultimate sale to utility customers in the state before the
4 effective date of this section and for which abandonment
5 authority is granted after December 31, 2017;

6 (2) is owned or leased, in whole or in part,
7 by a qualifying utility; and

8 (3) is operated by a qualifying utility prior
9 to the effective date of the Securitization Bond Act and for
10 which the qualifying utility obtains a financing order and
11 approval from the commission to abandon prior to January 1,
12 2024;

13 O. "qualifying utility" means a public utility
14 pursuant to Paragraph (1) of Subsection G of Section 62-3-3
15 NMSA 1978 that owns or leases all or a portion of a qualifying
16 generating facility and its successor or assignees;

17 P. "replacement power resources":

18 (1) means four hundred fifty megawatts of
19 nameplate capacity as replacement for the qualifying generating
20 facility; and

21 (2) does not include the expanded use of any
22 generation resources located outside of New Mexico that are in
23 the utility's generation portfolio but have not been placed in
24 the rate base as of January 1, 2019;

25 Q. "securitization bond" means a bond, debenture,

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1 note, certificate of participation, certificate of beneficial
2 interest, certificate of ownership or other evidences of
3 indebtedness or ownership that is issued by a qualifying
4 utility pursuant to a financing order, the proceeds of which
5 are used directly or indirectly to recover, finance or
6 refinance securitization costs and financing costs that are
7 secured by or payable from securitization property and that are
8 non-recourse to the qualifying utility;

9 R. "securitization charge" means a non-bypassable
10 charge paid by all customers of a qualifying utility for the
11 recovery of securitization costs and financing costs and
12 collected by a qualifying utility or a collection agent;

13 S. "securitization costs" means costs incurred or
14 expected to be incurred by a qualifying utility that are caused
15 by the abandonment of or associated with qualifying generating
16 facilities, that:

17 (1) includes:

18 (a) costs relating to regulatory assets
19 that are associated with or attributable to the qualifying
20 generating facility that were authorized by the commission
21 prior to the issuance of the financing order or determined by
22 the commission in the financing order to be reasonable for
23 inclusion in securitization costs;

24 (b) reasonable and prudent costs
25 associated with or attributed to decommissioning, severance pay

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1 and job training for displaced workers and the qualifying
2 utility's share of payments for which the qualifying utility is
3 contractually obligated to make to pay for reclamation of mines
4 that provide coal to qualifying generating facilities, contract
5 termination fees and engineering work;

6 (c) any reasonable and prudent
7 demolition or similar cost that exceeds the salvage value of
8 the property and any other reasonable and prudent cost that has
9 been incurred or will be incurred by the qualifying utility
10 relating to the qualifying generating facilities that have not
11 been fully recovered at the time of abandonment;

12 (d) costs that have been allowed to be
13 recovered from customers, either by commission approval or by
14 the commission not disapproving recovery from customers, by the
15 effective date of the Securitization Bond Act; provided that
16 such costs have been included in the cost of service applied
17 for by the qualifying utility in a general rate case unless the
18 commission expressly reserved determination of cost recovery
19 for a future proceeding and disallowed recovery of such costs
20 before the issuance of the financing order or in the financing
21 order;

22 (e) costs that the commission has
23 disallowed pending a determination of cost recovery in a future
24 proceeding and the commission determines that such costs are
25 reasonable and prudent before the issuance of the financing

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1 order or in the financing order;

2 (f) reasonable and prudent preliminary
3 costs associated with activities that are incurred prior to the
4 issuance of a financing order and that are to be reimbursed
5 from the proceeds of securitization bonds;

6 (g) reasonable and prudent capital
7 investments that, considering the proposed abandonment date,
8 are necessary to operate and maintain the qualifying generating
9 facility in good working condition, according to good utility
10 practice, until the facility is abandoned;

11 (h) the undepreciated investment in
12 property that is being abandoned; and

13 (i) payments required pursuant to
14 Section 19 of the Securitization Bond Act; and

15 (2) does not include:

16 (a) the costs of investing in
17 replacement power resources;

18 (b) any costs lawfully disallowed or
19 limited by the commission prior to the effective date of the
20 Securitization Bond Act; or

21 (c) any monetary penalty, fine or
22 forfeiture assessed against a qualifying utility by a
23 government agency or court under a federal or state statute,
24 rule or regulation;

25 T. "securitization property" means:

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1 (1) the rights and interests of a qualifying
2 utility under a financing order, including the right to impose,
3 charge, collect and receive securitization charges in the
4 amount necessary to provide for the full payment and recovery
5 of all securitization costs and financing costs identified in
6 the financing order as costs to be financed by securitization
7 bonds and to obtain adjustments to the charges as provided in
8 Section 5 of the Securitization Bond Act, and any interest in
9 such rights and interests; and

10 (2) all revenues, receipts, collections,
11 rights to payment, payments, money, claims or other proceeds
12 arising from the rights and interests specified in Paragraph
13 (1) of this subsection;

14 U. "securitization revenues" means all revenues,
15 receipts, collections, claims, rights to payments, payments,
16 money or other proceeds arising from securitization property
17 and collected by a qualifying utility or other collection agent
18 that is attributable to a securitization charge;

19 V. "termination statement" means "termination
20 statement" as defined in the Uniform Commercial Code-Secured
21 Transactions;

22 W. "traditional utility financing mechanism" means
23 a return on investment at the qualifying utility's weighted
24 average cost of capital; and

25 X. "utility service area" means:

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1 (1) the geographic area of the state in which
2 a qualifying utility provides electric delivery service to
3 customers at the time of issuance of a financing order; and

4 (2) for as long as securitization bonds issued
5 pursuant to a financing order are outstanding and the related
6 securitization costs and financing costs have not been
7 recovered in full, any additions to or enlargements of the
8 geographic area, whether or not approved by the commission in a
9 formal proceeding.

10 SECTION 3. [NEW MATERIAL] FINANCING ORDER--APPLICATION.--

11 A. A qualifying utility may apply to the commission
12 for a financing order pursuant to this section. To obtain a
13 financing order, a qualifying utility shall comply with Section
14 19 of the Securitization Bond Act and obtain approval to
15 abandon a qualifying generating facility pursuant to Section
16 62-9-5 NMSA 1978.

17 B. An application for a financing order shall
18 include:

19 (1) evidence that the applicant is a
20 qualifying utility and that the coal-fired facilities to which
21 a financing order would apply meet the requirements of
22 qualifying generating facilities;

23 (2) a description of the qualifying generating
24 facility that the qualifying utility proposes to abandon or for
25 which abandonment authority was granted after December 31,

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1 2017;

2 (3) an estimate of the securitization costs
3 associated with the abandonment of the qualifying generating
4 facility described in the application, including compliance
5 with Section 19 of the Securitization Bond Act;

6 (4) the amount of the securitization costs the
7 qualifying utility proposes to finance through the issuance of
8 one or more series of securitization bonds;

9 (5) an estimate of the financing costs
10 associated with each series of securitization bonds proposed to
11 be issued;

12 (6) an estimate of the amount of the
13 securitization charges necessary to recover the securitization
14 costs and financing costs the qualifying utility proposes to
15 finance through the issuance of securitization bonds and the
16 proposed calculation thereof, which estimate and calculation
17 should take into account the estimated date of issuance and
18 estimated principal amount of each series of securitization
19 bonds proposed to be issued;

20 (7) a proposed methodology for allocating the
21 securitization costs among customer classes;

22 (8) a description of the proposed adjustment
23 mechanism;

24 (9) an estimate, based on current market
25 conditions, of the cost savings on a net present value basis

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1 over the proposed term of the securitization bonds to the
2 customers of the qualifying utility expected to result from the
3 financing of the securitization costs with securitization bonds
4 as compared to the use of traditional utility financing
5 mechanisms;

6 (10) an estimate of the date on which the
7 securitization bonds are expected to be issued and the expected
8 term over which the financing costs associated with the
9 issuance are expected to be recovered or, if the bonds are
10 expected to be issued in more than one series, the estimated
11 issuance date and expected term for each bond issuance;
12 provided that the maximum term for each bond issuance shall be
13 no longer than twenty-five years;

14 (11) identification of plans to sell, assign,
15 transfer or convey, other than as a security, interest in
16 securitization property, including identification of assignees;

17 (12) identification of ancillary agreements
18 that may be necessary or appropriate;

19 (13) a description of a proposed ratemaking
20 process to reconcile any difference between the projected
21 pretax costs included in the amount of securitization costs and
22 financing costs financed by securitization bonds and the final
23 pretax securitization costs incurred by the qualifying utility.
24 The proposed ratemaking process shall include evidence as to
25 the reasons for costs that exceed the projected costs financed

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1 by the securitization bonds and provide for:

2 (a) the recovery of reasonable and
3 prudent securitization costs and financing costs actually
4 incurred by the qualifying utility that exceed the projected
5 costs financed by the securitization bonds; or

6 (b) the refund to customers of the
7 projected costs financed by securitization bonds that exceed
8 the actual securitization costs and financing costs incurred by
9 the qualifying utility; and

10 (14) any other information reasonably required
11 by the commission to determine whether a financing order should
12 be issued and if approval to abandon a qualifying generating
13 facility and any requests for certificates of public
14 convenience and necessity should be granted.

15 C. Notice of an application for a financing order
16 shall be given to the parties of record in the qualifying
17 utility's most recent general rate case and published in
18 newspapers of general circulation in the qualifying utility's
19 service area in the state and in the county in the state in
20 which the qualifying generating facility proposed to be
21 abandoned is located and as otherwise may be ordered by the
22 commission.

23 SECTION 4. [NEW MATERIAL] FINANCING ORDER--ISSUANCE--
24 TERMS OF BONDS--NON-UTILITY AFFILIATE REQUIREMENTS--REPORTS TO
25 COMMISSION.--

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1 A. The commission may approve an application for a
2 financing order without a formal hearing if no protest
3 establishing good cause for a formal hearing is filed within
4 thirty days of the date when notice is given of the filing of
5 the application for the financing order. The commission shall
6 issue an order granting or denying the application for a
7 financing order and the final order on an accompanying
8 application of the qualifying utility for approval to abandon
9 the qualifying generating facility within six months from the
10 date the application for the financing order is filed with the
11 commission. For good cause shown, the commission may extend
12 the time for issuing the order for an additional three months.

13 B. Failure to issue an order within the time
14 prescribed by Subsection A of this section shall be deemed
15 approval of the application for a financing order, including
16 approval to abandon the qualifying generating facility, if
17 abandonment approval was requested in, consolidated or joined
18 with the application for the financing order pursuant to this
19 section. The commission chair or the chair's designee shall,
20 within two days after expiration of the time prescribed by this
21 subsection, issue an order declaring that the abandonment and
22 application for a financing order has been approved by
23 operation of law.

24 C. If an application for a financing order is
25 accompanied by a request for issuance of certificates of public

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1 convenience and necessity for replacement power resources, this
2 section provides an alternative time frame to the time frame
3 provided in Subsection C of Section 62-9-1 NMSA 1978 and the
4 time frame specified in this section shall apply to requests
5 for issuance of certificates of public convenience and
6 necessity, unless the request has been deferred to a separate
7 proceeding pursuant to Subsection A of Section 3 of the
8 Securitization Bond Act.

9 D. The issuance of a financing order shall be the
10 only approval required for the authority granted in the
11 financing order.

12 E. The commission shall issue a financing order if
13 the commission finds that the:

14 (1) applicant is a qualifying utility and that
15 the facility being abandoned is a qualifying generating
16 facility;

17 (2) proposed issuance of securitization bonds
18 will result in cost savings to customers of the qualifying
19 utility on a net present value basis over the projected term of
20 the securitization bonds compared to the use of traditional
21 utility financing mechanisms; provided that, in calculating the
22 comparison, the commission shall not exclude recovery of any
23 securitization costs in estimating the amount of costs to
24 customers associated with traditional utility financing
25 mechanisms;

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1 (3) estimate of the securitization charges
2 necessary to recover the securitization costs, including
3 compliance with Section 19 of the Securitization Bond Act, and
4 the financing costs the qualifying utility proposes to be
5 financed by securitization bonds and the proposed calculation
6 thereof are reasonable;

7 (4) proposed methodology for allocating the
8 securitization costs among customer classes is reasonable;

9 (5) proposed adjustment mechanism is
10 reasonable and complies with Section 5 of the Securitization
11 Bond Act;

12 (6) proposed ratemaking process to reconcile
13 any difference between the projected pretax costs included in
14 the amount of securitization costs and financing costs financed
15 by securitization bonds and the final pretax securitization
16 costs and financing costs incurred by the qualifying utility is
17 reasonable and does not affect the amount of the securitization
18 bonds proposed to be issued or the proposed securitization
19 charges; and

20 (7) term of the securitization bonds is
21 sufficient to secure the highest bond rating possible.

22 F. If the commission determines that the findings
23 specified in Subsection E of this section cannot be made, the
24 commission shall determine what changes in the application
25 would allow the findings to be made and provide the qualifying

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1 utility with the opportunity to amend the qualifying utility's
2 proposal in the manner that allows the commission to make the
3 findings.

4 G. A financing order shall include the following
5 provisions:

6 (1) approval for the qualifying utility to
7 issue securitization bonds in compliance with Section 19 of the
8 Securitization Bond Act, to use securitization bonds to finance
9 the maximum amount of the securitization costs as requested in
10 the application and to use the proceeds thereof as provided in
11 Subsection A of Section 10 of the Securitization Bond Act;

12 (2) approval for the qualifying utility to
13 recover the financing costs through securitization charges,
14 subject to the adjustment mechanism as provided in Section 5 of
15 the Securitization Bond Act, until the securitization bonds
16 issued pursuant to the financing order and the financing costs
17 related to those bonds are paid in full;

18 (3) approval for the qualifying utility to
19 impose a non-bypassable securitization charge as a separate
20 line item on its customer bills;

21 (4) approval of an adjustment mechanism;

22 (5) a description of the securitization
23 property that is created by the financing order and that may be
24 used to pay, and secure the payment of, the securitization
25 bonds and financing costs authorized to be issued in the

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1 financing order;

2 (6) approval of the securitization charges
3 necessary to recover the securitization costs and the financing
4 costs the qualifying utility would have in issuing
5 securitization bonds and the proposed calculation thereof;

6 (7) approval of the allocation of the
7 securitization costs among customer classes;

8 (8) approval to enter into ancillary
9 agreements as necessary or appropriate;

10 (9) approval of any plans for selling,
11 assigning, transferring or conveying, other than as a security,
12 an interest in securitization property; and

13 (10) approval of a ratemaking and rate
14 adjustment process to reconcile any difference between the
15 projected pretax costs included in the amount of securitization
16 costs and financing costs financed by securitization bonds and
17 the final pretax securitization costs incurred by the
18 qualifying utility, which shall not affect the amount of the
19 securitization bonds proposed to be issued or the proposed
20 securitization charges. The ratemaking process approved shall
21 require evidence as to the reasons for costs that exceed the
22 projected costs financed by the securitization bonds and
23 provide for:

24 (a) the recovery of reasonable and
25 prudent securitization costs and financing costs actually

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1 incurred by the qualifying utility that exceed the projected
2 costs financed by the securitization bonds; or

3 (b) the refund to customers of the
4 projected costs financed by securitization bonds that exceed
5 the actual securitization costs and financing costs incurred by
6 the qualifying utility.

7 H. A financing order may provide that the creation
8 of securitization property shall be simultaneous with the sale
9 of the securitization property to an assignee as provided in
10 the application and the pledge of the securitization property
11 to secure securitization bonds.

12 I. A financing order may authorize the qualifying
13 utility to issue more than one series of securitization bonds
14 for a maximum term of no more than twenty-five years for each
15 series. With such authorization, the qualifying utility shall
16 not subsequently be required to secure a separate financing
17 order for each issuance of securitization bonds or for each
18 scheduled activity associated with abandonment of the
19 qualifying generating facility, such as decommissioning
20 activities.

21 J. The commission may require, as a condition to
22 the effectiveness of the financing order and in every
23 circumstance subject to the limitations set forth in Subsection
24 A of Section 6 of the Securitization Bond Act, that, during any
25 period in which securitization bonds issued pursuant to the

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1 financing order are outstanding, an assignee that is a non-
2 utility affiliate and issues securitization bonds will provide
3 in the affiliate's articles of incorporation, partnership
4 agreement or operating agreement, as applicable, that in order
5 for a person to file a voluntary bankruptcy petition on behalf
6 of that assignee, the prior unanimous consent of the directors,
7 partners or managers, as applicable, shall be required. Any
8 such provision shall constitute a legal, valid and binding
9 agreement of the shareholders, partners or members, as
10 applicable, of the assignee and is enforceable against such
11 shareholders, partners or members.

12 K. A financing order may require the qualifying
13 utility to file with the commission a periodic report showing
14 the receipt and disbursement of proceeds of securitization
15 bonds. A financing order may authorize the staff of the
16 commission to review and audit the books and records of the
17 qualifying utility, and an assignee that is a non-utility
18 affiliate and issues securitization bonds, relating to the
19 receipt and disbursement of proceeds of securitization bonds.

20 SECTION 5. [NEW MATERIAL] ADJUSTMENT MECHANISM--REPORTS
21 TO COMMISSION--HEARING PROCEDURES.--

22 A. If the commission issues a financing order, the
23 commission shall periodically approve the use of the adjustment
24 mechanism approved in the financing order to correct for any
25 over-collection or under-collection of the securitization

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1 charges and to provide for timely payment of scheduled
2 principal of and interest on the securitization bonds and the
3 payment and recovery of other financing costs in accordance
4 with the financing order. Except as provided in Subsection B
5 of this section, the qualifying utility shall file at least
6 semiannually, or more frequently as provided in the financing
7 order:

8 (1) a calculation estimating whether the
9 existing securitization charge is sufficient to provide for
10 timely payment of scheduled principal of and interest on the
11 securitization bonds and the payment and recovery of other
12 financing costs in accordance with the financing order or if
13 either an over-collection or under-collection is projected; and

14 (2) a calculation showing the adjustment to
15 the securitization charge to correct for any over-collection or
16 under-collection.

17 B. The qualifying utility shall file the
18 calculations described in Subsection A of this section at least
19 quarterly during the two-year period preceding the final
20 maturity date of the securitization bonds.

21 C. The adjustment mechanism shall remain in effect
22 until the securitization bonds and all financing costs have
23 been fully paid and recovered, and any under-collection is
24 recovered from customers and any over-collection is returned to
25 customers.

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1 D. On the same day the qualifying utility files
2 with the commission its calculation of the adjustment to the
3 securitization charge, the qualifying utility shall cause a
4 copy of the filing to be served on the parties of record in the
5 case in which the financing order was issued.

6 E. An adjustment to the securitization charge filed
7 by the qualifying utility shall be deemed approved without
8 hearing thirty days after filing the adjustment unless:

9 (1) no later than twenty days from the date
10 the qualifying utility filed the calculation of the adjustment,
11 the staff of the commission notifies the commission of a
12 potential mathematical error in the adjustment and identifies
13 the mathematical error with specificity; and

14 (2) the commission determines, after due
15 consideration of the notice from the staff of the commission,
16 that good cause exists to suspend the operation of the
17 adjustment, pending hearing on the mathematical error in the
18 adjustment, for a period not to exceed sixty days from the date
19 the qualifying utility filed the calculation of the adjustment.
20 For purposes of this paragraph, "good cause" means that the
21 calculation of the adjustment is unlikely to provide for timely
22 payment of scheduled principal of and interest on the
23 securitization bonds and the payment and recovery of other
24 financing costs in accordance with the financing order.

25 F. If the commission determines that a hearing is

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1 necessary, the commission shall hold a hearing within forty
2 days of the date the qualifying utility filed the calculation
3 of the adjustment. The hearing shall be limited to determining
4 whether there is any mathematical error in the calculation of
5 the adjustment. If the commission determines that the
6 calculation of the adjustment is mathematically in error, the
7 commission shall issue an order that rejects the adjustment and
8 that determines the mathematically correct calculation. The
9 qualifying utility shall be authorized to adjust the
10 securitization charge in accordance with the commission's
11 calculation within five days from issuance of the order. If
12 the commission does not issue an order rejecting the adjustment
13 with a determination of the mathematically corrected
14 calculation within sixty days from the date the qualifying
15 utility filed the adjustment, the adjustment to the
16 securitization charge shall be deemed approved.

17 G. No adjustment pursuant to this section, and no
18 proceeding held pursuant to this section, shall affect the
19 irrevocability of the financing order pursuant to Section 6 of
20 the Securitization Bond Act.

21 SECTION 6. [NEW MATERIAL] FINANCING ORDER--
22 IRREVOCABILITY--AMENDMENTS.--

23 A. A financing order is irrevocable, and the
24 commission shall not reduce, impair, postpone or terminate the
25 securitization charges approved in the financing order, the

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1 securitization property or the collection or recovery of
2 securitization revenues.

3 B. A financing order may be amended at the request
4 of the qualifying utility to commence a proceeding and issue an
5 amended financing order that:

6 (1) provides for refinancing, retiring or
7 refunding all or a portion of an outstanding series of
8 securitization bonds issued pursuant to the original financing
9 order if the commission includes in the amended financing order
10 the findings and requirements specified in Subsections E and G
11 of Section 4 of the Securitization Bond Act;

12 (2) adjusts the amount of securitization costs
13 to be financed by securitization bonds that have not yet been
14 issued to reflect updated estimated or actual costs that differ
15 from costs estimated at the time of the initial financing
16 order; and

17 (3) is subject to the limitations set forth in
18 Subsection A of this section.

19 C. No change in the credit rating of a qualifying
20 utility from the credit rating at the time of issuance of a
21 financing order shall impair the irrevocability of a financing
22 order.

23 SECTION 7. [NEW MATERIAL] AGGRIEVED PARTIES--REQUEST FOR
24 REHEARING--JUDICIAL REVIEW--PRECEDENCE OVER OTHER CASES.--

25 A. A financing order is a final order of the

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1 commission. A party aggrieved by the issuance of a financing
2 order may apply to the commission for a rehearing in accordance
3 with Section 62-10-16 NMSA 1978; provided that such application
4 shall be due no later than ten calendar days after issuance of
5 the financing order. An application for rehearing shall be
6 deemed denied if not acted upon by the commission within ten
7 calendar days after the filing of the application.

8 B. An aggrieved party may file a notice of appeal
9 with the supreme court in accordance with Section 62-11-1 NMSA
10 1978; provided that such notice shall be due no later than ten
11 calendar days after denial of an application for rehearing or,
12 if rehearing is not applied for, no later than ten calendar
13 days after issuance of the financing order. The supreme court
14 shall proceed to hear and determine the appeal as expeditiously
15 as practicable.

16 SECTION 8. [NEW MATERIAL] CONDITIONS THAT KEEP FINANCING
17 ORDERS IN EFFECT AND SECURITIZATION CHARGES IMPOSED.--

18 A. A financing order shall remain in effect until
19 the securitization bonds issued pursuant to the financing order
20 have been paid in full and all financing costs relating to the
21 securitization bonds have been paid in full.

22 B. A financing order shall remain in effect and
23 unabated notwithstanding the bankruptcy, reorganization or
24 insolvency of the qualifying utility or any non-utility
25 affiliate or the commencement of any judicial or non-judicial

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1 proceeding for bankruptcy or for appointment of a receiver.

2 C. If securitization bonds issued pursuant to a
3 financing order are outstanding and the related securitization
4 costs and financing costs have not been paid in full, the
5 securitization charges authorized to be imposed in the
6 financing order shall be a part of all customer bills and be
7 collected by the qualifying utility, or a collection agent, in
8 full through a non-bypassable charge that is a separate line
9 item on customer bills and separate and apart from the
10 qualifying utility's base rates. The charge shall be paid by
11 all customers:

12 (1) receiving transmission, distribution or
13 any other service from the qualifying utility under
14 commission-approved rate schedules or special contracts; and

15 (2) who acquire electricity from an
16 alternative or subsequent electricity supplier in the utility
17 service area, to the extent that such acquisition is permitted
18 by law.

19 SECTION 9. [NEW MATERIAL] LIMITATIONS ON JURISDICTION OF
20 COMMISSION.--

21 A. If the commission issues a financing order, the
22 commission shall not, in exercising its powers and carrying out
23 its duties regarding regulation and ratemaking, consider
24 securitization bonds issued pursuant to the financing order to
25 be the debt of the qualifying utility; the securitization

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1 charges paid under the financing order to be revenue of the
2 qualifying utility; or the securitization costs to be financed
3 by securitization bonds or financing costs specified in the
4 financing order to be the costs of the qualifying utility.
5 Reasonable actions taken by a qualifying utility to comply with
6 the financing order shall be deemed to be just and reasonable;
7 provided that, subject to the limitations set forth in Section
8 6 of the Securitization Bond Act, nothing in this subsection
9 shall:

10 (1) affect the authority of the commission to
11 apply the adjustment mechanism as provided in Section 5 of the
12 Securitization Bond Act;

13 (2) prevent or preclude the commission from
14 investigating the compliance of a qualifying utility with the
15 terms and conditions of a financing order and requiring
16 compliance therewith;

17 (3) prevent or preclude the commission from
18 imposing regulatory sanctions against a qualifying utility for
19 failure to comply with the terms and conditions of a financing
20 order or the requirements of the Securitization Bond Act; or

21 (4) prevent or preclude the commission from
22 including the qualifying utility's costs of replacement power
23 resources in the qualifying utility's cost of service.

24 B. The commission shall not order or otherwise
25 require, directly or indirectly, a qualifying utility to issue

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1 securitization bonds to finance any costs associated with
2 abandonment of a qualifying generating facility. The
3 commission shall not use a qualifying utility's decision not to
4 issue securitization bonds as a basis to refuse to allow a
5 qualifying utility to recover securitization costs in an
6 otherwise permissible fashion, or as a basis to refuse or
7 condition authorization to issue securities pursuant to
8 Sections 62-6-6 and 62-6-7 NMSA 1978.

9 SECTION 10. [NEW MATERIAL] QUALIFYING UTILITY--DUTIES.--

10 A. A qualifying utility shall use the proceeds of
11 the issuance of securitization bonds for paying securitization
12 costs, payments required pursuant to Section 19 of the
13 Securitization Bond Act and financing costs and to acquire
14 replacement power resources and for other utility purposes as
15 provided in Section 62-6-6 NMSA 1978.

16 B. A qualifying utility shall only close a
17 qualifying generating facility in accordance with Section 19 of
18 the Securitization Bond Act.

19 C. A qualifying utility for which a financing order
20 has been issued shall annually provide to its customers a
21 concise explanation of the securitization charges approved in a
22 financing order, as modified by subsequent issuances of
23 securitization bonds authorized under a financing order, if
24 any, and by the adjustment mechanism as provided in Section 5
25 of the Securitization Bond Act. The explanations may be made

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1 by bill inserts, website information or other appropriate
2 means.

3 D. Securitization revenues shall be applied solely
4 to the repayment of securitization bonds and financing costs.

5 E. The failure of a qualifying utility to apply the
6 proceeds of an issuance of securitization bonds in a
7 reasonable, prudent and appropriate manner, or otherwise comply
8 with any provision of the Securitization Bond Act, shall not
9 invalidate, impair or affect a financing order, securitization
10 property, securitization charge or securitization bonds;
11 provided that, subject to the limitations set forth in Section
12 6 of the Securitization Bond Act, nothing in this subsection
13 shall prevent or preclude the commission from imposing
14 regulatory sanctions or other remedies allowed by law against a
15 qualifying utility for failure to comply with the terms and
16 conditions of a financing order or the requirements of the
17 Securitization Bond Act.

18 SECTION 11. [NEW MATERIAL] SECURITIZATION PROPERTY--
19 SECURITIZATION REVENUES.--

20 A. Securitization property that is created in a
21 financing order shall constitute an existing, present property
22 right, notwithstanding the fact that the imposition and
23 collection of securitization charges depend on the qualifying
24 utility continuing to provide electric energy or continuing to
25 perform its servicing functions relating to the collection of

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1 securitization charges or on the level of future energy
2 consumption. Securitization property shall exist whether or
3 not the securitization revenues have been billed, have accrued
4 or have been collected and notwithstanding the fact that the
5 value or amount of the securitization property is dependent on
6 the future provision of service to customers by the qualifying
7 utility.

8 B. All securitization property created in a
9 financing order shall continue to exist until the
10 securitization bonds issued pursuant to a financing order are
11 paid in full and the financing costs relating to the bonds have
12 been paid in full.

13 C. All or any portion of securitization property
14 may be transferred, sold, conveyed or assigned to a non-utility
15 affiliate that is:

16 (1) wholly owned, directly or indirectly, by
17 the qualifying utility;

18 (2) created for the limited purposes of
19 acquiring, owning or administering securitization property or
20 issuing securitization bonds under the financing order; or

21 (3) a combination of these purposes.

22 D. All or any portion of securitization property
23 may be pledged to secure the payment of securitization bonds,
24 amounts payable to financing parties and bondholders, amounts
25 payable under any ancillary agreement and other financing

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1 costs.

2 E. The formation by a qualifying utility of a non-
3 utility affiliate for the limited purpose of acquiring, owning
4 or administering securitization property or issuing
5 securitization bonds pursuant to a financing order, or a
6 combination of these purposes, and any transfer, sale,
7 conveyance, assignment, grant of a security interest in or
8 pledge of securitization property by a qualifying utility to a
9 non-utility affiliate, to the extent previously authorized in a
10 financing order, does not require any further approval of the
11 commission and shall not otherwise be subject to the rules of
12 the commission regarding class II transactions as defined by
13 Subsection L of Section 62-3-3 NMSA 1978.

14 F. If a qualifying utility defaults on any required
15 payment of securitization revenues, a court with jurisdiction
16 in the matter, on application by an interested party and
17 without limiting any other remedies available to the applying
18 party, shall order the sequestration and payment of the
19 securitization revenues for the benefit of bondholders, any
20 assignee and any financing parties. The order shall remain in
21 full force and effect notwithstanding any bankruptcy,
22 reorganization or other insolvency or receivership proceedings
23 with respect to the qualifying utility or any non-utility
24 affiliate.

25 G. Securitization property, securitization revenues

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1 and the interests of an assignee, bondholder or financing party
2 in securitization property and securitization revenues are not
3 subject to set-off, counterclaim, surcharge or defense by the
4 qualifying utility or any other person or in connection with
5 the bankruptcy, reorganization or other insolvency or
6 receivership proceeding of the qualifying utility, any non-
7 utility affiliate or any other entity.

8 H. Any successor to a qualifying utility shall be
9 bound by the requirements of the Securitization Bond Act and
10 shall perform and satisfy all obligations of, and have the same
11 rights under a financing order as, the qualifying utility under
12 the financing order in the same manner and to the same extent
13 as the qualifying utility, including the obligation to collect
14 and pay securitization revenues to the person entitled to
15 receive the revenues.

16 SECTION 12. [NEW MATERIAL] SECURITY INTERESTS--
17 APPLICABILITY OF OTHER ACTS--CREATION OF SECURITY INTEREST--
18 ATTACHMENT ON FILING WITH SECRETARY OF STATE--PRIORITY OVER
19 OTHER LIENS.--

20 A. Except as otherwise provided in this section,
21 the creation, perfection and enforcement of a security interest
22 in securitization property to secure the repayment of the
23 principal of and interest on securitization bonds, amounts
24 payable pursuant to an ancillary agreement and other financing
25 costs are governed by this section. This section shall be

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1 deemed to provide alternatives to the provisions of the Uniform
2 Commercial Code and Chapter 62, Article 13 of the Public
3 Utility Act, which, to the extent the Uniform Commercial Code
4 or that article is inconsistent with this section, are declared
5 to be inapplicable to the Securitization Bond Act.

6 B. The description or indication of securitization
7 property in a transfer or security agreement and a financing
8 statement is sufficient only if the description or indication
9 refers to the Securitization Bond Act and the financing order
10 creating the securitization property. This section applies to
11 all purported transfers of, and all purported grants of liens
12 on or security interests in, securitization property.

13 C. A security interest in securitization property
14 is created, valid and binding at the later of the time when:

15 (1) the financing order is issued;

16 (2) a security agreement is executed and
17 delivered; or

18 (3) value is received for the securitization
19 bonds.

20 D. The security interest attaches without any
21 physical delivery of collateral or other act and the lien of
22 the security interest shall be valid, binding and perfected
23 against all parties having claims of any kind in tort, contract
24 or otherwise against the person granting the security interest,
25 regardless of whether such parties have notice of the lien, on

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1 the filing of a financing statement with the secretary of
2 state. The secretary of state shall maintain the financing
3 statement in the same manner and in the same recordkeeping
4 system maintained for financing statements filed pursuant to
5 the Uniform Commercial Code-Secured Transactions. The filing
6 of a financing statement pursuant to this subsection shall be
7 governed by the provisions regarding the filing of financing
8 statements in that article; provided that financing statements
9 filed pursuant to this section shall be effective until a
10 termination statement is filed.

11 E. A security interest in securitization property
12 is a continuously perfected security interest and has priority
13 over any other lien, created by operation of law or otherwise,
14 that may subsequently attach to the securitization property
15 unless the holder of the security interest has agreed in
16 writing otherwise.

17 F. The priority of a security interest in
18 securitization property is not affected by the commingling of
19 securitization revenues with other funds. Any pledgee or
20 secured party shall have a perfected security interest in the
21 amount of all securitization revenues that are deposited in any
22 cash or deposit account of the qualifying utility in which
23 securitization revenues have been commingled with other funds
24 and any other security interest that may apply to those funds
25 shall be terminated when they are transferred to a segregated

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1 account for the assignee or a financing party.

2 G. No order of the commission amending a financing
3 order pursuant to Subsection B of Section 6 of the
4 Securitization Bond Act, and no application of the adjustment
5 mechanism as provided in Section 5 of that act, will affect the
6 validity, perfection or priority of a security interest in or
7 transfer of securitization property.

8 SECTION 13. [NEW MATERIAL] SALE OF SECURITIZATION
9 PROPERTY--PERFECTING INTERESTS--ABSOLUTE TRANSFER AND TRUE SALE
10 REQUIREMENTS.--

11 A. Any sale, assignment or transfer of
12 securitization property shall be an absolute transfer and true
13 sale of, and not a pledge of or secured transaction relating
14 to, the seller's right, title and interest in, to and under the
15 securitization property if the documents governing the
16 transaction expressly state that the transaction is a sale or
17 other absolute transfer. A transfer of an interest in
18 securitization property shall be created when:

- 19 (1) the financing order creating the
20 securitization property has become effective;
21 (2) the documents evidencing the transfer of
22 securitization property have been executed and delivered to the
23 assignee; and
24 (3) value is received.

25 B. On the filing of a financing statement with the

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1 secretary of state pursuant to Section 12 of the Securitization
2 Bond Act, a transfer of an interest in securitization property
3 shall be perfected against all third persons, including any
4 judicial lien or other lien creditors or any claims of the
5 seller or creditors of the seller, other than creditors holding
6 a prior security interest, ownership interest or assignment in
7 the securitization property previously perfected in accordance
8 with this section or Section 12 of the Securitization Bond Act.

9 C. The characterization of the sale, assignment or
10 transfer as an absolute transfer and true sale and the
11 corresponding characterization of the property interest of the
12 purchaser, shall not be affected or impaired by, among other
13 things, the occurrence of any of the following factors:

14 (1) commingling of securitization revenues
15 with other funds;

16 (2) the retention by the seller of:
17 (a) a partial or residual interest,
18 including an equity interest, in the securitization property,
19 whether direct or indirect, or whether subordinate or
20 otherwise; or

21 (b) the right to recover costs
22 associated with taxes or license fees imposed on the collection
23 of securitization revenues;

24 (3) any recourse that the purchaser may have
25 against the seller;

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1 (4) any indemnification rights, obligations or
2 repurchase rights made or provided by the seller;

3 (5) the obligation of the seller to collect
4 securitization revenues on behalf of an assignee;

5 (6) the treatment of the sale, assignment or
6 transfer for tax, financial reporting or other purposes;

7 (7) any subsequent order of the commission
8 amending a financing order pursuant to Subsection B of Section
9 6 of the Securitization Bond Act; or

10 (8) any use of an adjustment mechanism
11 approved in the financing order.

12 SECTION 14. [NEW MATERIAL] EXEMPTION FROM FEE
13 ASSESSMENTS.--The imposition, collection and receipt of a
14 securitization charge shall be exempt from an assessment of a
15 franchise fee imposed by a municipality, county or other
16 political subdivision of the state and inspection and
17 supervision fees assessed pursuant to the Public Utility Act.

18 SECTION 15. [NEW MATERIAL] SECURITIZATION BONDS NOT
19 PUBLIC DEBT.--Securitization bonds issued pursuant to the
20 Securitization Bond Act shall not constitute a debt or a pledge
21 of the faith and credit or taxing power of this state or of any
22 county, municipality or any other political subdivision of this
23 state. Bondholders shall have no right to have taxes levied by
24 the legislature or the taxing authority of any county,
25 municipality or other political subdivision of this state for

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1 the payment of the principal of or interest on securitization
2 bonds. The issuance of securitization bonds does not, directly
3 or indirectly or contingently, obligate the state or a
4 political subdivision of the state to levy any tax or make any
5 appropriation for payment of the principal of or interest on
6 the bonds.

7 SECTION 16. [NEW MATERIAL] SECURITIZATION BONDS AS LEGAL
8 INVESTMENTS.--Securitization bonds shall be legal investments
9 for all governmental units, permanent funds of the state,
10 finance authorities, financial institutions, insurance
11 companies, fiduciaries and other persons requiring statutory
12 authority regarding legal investments.

13 SECTION 17. [NEW MATERIAL] STATE PLEDGE NOT TO IMPAIR.--

14 A. The state pledges to and agrees with the
15 bondholders, any assignee and any financing parties that the
16 state will not take or permit any action that impairs the value
17 of securitization property or, except as allowed pursuant to
18 Section 5 of the Securitization Bond Act, reduce, alter or
19 impair securitization charges that are imposed, collected and
20 remitted for the benefit of the bondholders, any assignee and
21 any financing parties, until all principal, interest and
22 redemption premium in respect of securitization bonds, all
23 financing costs and all amounts to be paid to an assignee or
24 financing party under an ancillary agreement are paid and
25 performed in full.

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1 B. Any person who issues securitization bonds is
2 permitted to include the pledge specified in Subsection A of
3 this section in the securitization bonds, ancillary agreements
4 and documentation related to the issuance and marketing of the
5 securitization bonds.

6 **SECTION 18. [NEW MATERIAL] LOCATION OF REPLACEMENT POWER**
7 **RESOURCES AFTER ABANDONMENT.--**

8 A. A qualifying utility shall, within five years
9 after obtaining approval from the commission to abandon, but
10 prior to actual closure of a qualifying generating facility,
11 select sites for needed replacement power resources that are
12 located in the school district in New Mexico where the
13 qualifying generating facility is located.

14 B. The commission shall grant certificates of
15 public convenience and necessity for replacement power
16 resources and allow reasonable cost recovery in rates, except
17 that the commission may determine that the particular resource
18 proposed by the qualifying utility should not be approved and
19 that, instead, an alternative resource that meets the
20 provisions of Subsection A of this section should be approved.
21 The commission shall not disallow recovery of reasonable costs
22 necessary to comply with the locational directives provided in
23 Subsection A of this section.

24 C. In considering responses to requests for
25 proposals for replacement power resources pursuant to this

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1 section, a qualifying utility shall inform prospective
2 contractors and subcontractors that it promotes and encourages
3 the use of workers residing in New Mexico to the greatest
4 extent practicable and shall take that use into consideration
5 in evaluating proposals.

6 SECTION 19. [NEW MATERIAL] LOCAL ECONOMIC TRANSITION.--

7 Closure of a qualifying generating facility operated by a
8 qualifying utility may occur only after obtaining a financing
9 order and an abandonment order from the commission in
10 accordance with either of the following conditions:

11 A. the qualifying generating facility is closed no
12 earlier than twelve years after the qualifying utility obtains
13 a financing order and an abandonment order from the commission;
14 or

15 B. the qualifying generating facility is closed no
16 earlier than seven years after the qualifying utility obtains a
17 financing order and abandonment order from the commission and
18 securitization bonds have been issued; provided that the
19 qualifying utility shall transfer fifty million dollars
20 (\$50,000,000) within ninety days of issuance of the
21 securitization bonds to the county in New Mexico where the
22 qualifying generating facility being abandoned is located.

23 SECTION 20. [NEW MATERIAL] CHOICE OF LAW.--The law
24 governing the validity, enforceability, attachment, perfection,
25 priority and exercise of remedies with respect to the transfer

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1 of an interest or right or creation of a security interest in
2 any securitization property, securitization charge or financing
3 order shall be the laws of the state of New Mexico as set forth
4 in the Securitization Bond Act.

5 SECTION 21. [NEW MATERIAL] CONFLICTS.--In the event of
6 conflict between the Securitization Bond Act and any other law
7 regarding the attachment, assignment or perfection, or the
8 effect of perfection, or priority of any security interest in
9 or transfer of securitization property, the Securitization Bond
10 Act shall govern to the extent of the conflict.

11 SECTION 22. [NEW MATERIAL] VALIDITY ON ACTIONS IF ACT
12 HELD INVALID.--Effective on the date that securitization bonds
13 are first issued under the Securitization Bond Act, if any
14 provision of that act is held to be invalid or is invalidated,
15 superseded, replaced, repealed or expires for any reason, that
16 occurrence shall not affect the validity of any action allowed
17 pursuant to that act that is taken by the commission, a
18 qualifying utility, an assignee, a collection agent, a
19 financing party, a bondholder or a party to an ancillary
20 agreement and, to prevent the impairment of securitization
21 bonds issued or authorized in a financing order issued pursuant
22 to that act, any such action shall remain in full force and
23 effect with respect to all securitization bonds issued or
24 authorized in a financing order issued pursuant to that act
25 before the date that such provision is held to be invalid or is

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1 invalidated, superseded, replaced, repealed or expires for any
2 reason.

3 **SECTION 23. TEMPORARY PROVISION--PENDING APPLICATIONS.--**

4 If an abandonment application or proceeding to abandon a
5 qualifying generating facility is pending before the public
6 regulation commission on the effective date of this act, the
7 qualifying utility may file a separate application for a
8 financing order and the commission shall join or consolidate
9 the application for a financing order with the pending
10 proceeding involving abandonment of the qualifying generating
11 facility. On such joinder or consolidation, the time periods
12 prescribed by Subsection A of Section 4 of the Securitization
13 Bond Act shall become applicable to the joined or consolidated
14 case.

15 **SECTION 24. APPLICABILITY.--**The provisions of this act
16 shall not apply to a qualifying utility that makes an initial
17 application for a financing order more than twelve years after
18 the effective date of this act. This section shall not
19 preclude a qualifying utility for which the public regulation
20 commission has issued a financing order from applying to the
21 commission for a subsequent order amending the financing order
22 pursuant to Section 6 of the Securitization Bond Act.